IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9200 OF 2004

Sanket Developers ...Petitioner

Versus

Devidas Bhimrao Mundphane ...Respondent

.....

Mr. R.G.Ketkar, counsel for Petitioner

Mrs. Chandana Salgaonkar with Surekha wadkar, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 3RD FEBRUARY, 2005

P.C.:-

1. In Special Summary Suit No. 186 of 2003 an application under Order VII of Rule 11 of C.P.C. at Exh.25 was presented praying for dismissal of the suit at the threshold. After hearing the parties, the same application has been rejected by the impugned order dated 6.9.2004.

2. Heard Mr. Ketkar, the learned counsel for the petitioner and Ms. Chandana Salgaonkar with Ms Surekha Wadkar the learned counsel for the respondent. The petitioner defendant has yet to file written statement in which even the point of limitation can be taken and the trial Court will have to decide the same at the preliminary stage. The

view taken in the impugned order by referring to the decision in the case of **Shivrudra S. Paliwan & Ors. Vs. Prakash M. Pailwad & Ors. reported in 2003 Vol. 105 (2) Bom. L.R. 167** and **CanBank Financial Services Ltd. Vs. V.B. Desai and Anr. reported in AIR 2002 Bom. 247,** does not call for interference under Article 227 of the Constitution, more so when the petitioner has an appropriate remedy available after the written statement is filed.

3. The petition is, therefore, rejected with liberty to the petitioner as is available in law.